

I. A. A. asks the Utah Labor Commission to review procedural orders entered by Administrative Law Judges Hann and Marlowe related to the adjudication of Mr. A.'s complaint that the Utah Attorney General has engaged in employment discrimination in violation of the Utah Antidiscrimination Act ("the Act"; Title 34A, Chapter 5, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-1-303.

BACKGROUND AND ISSUE PRESENTED

On March 15, 2006, Judge Hann denied Mr. A.'s motion to compel the Utah Attorney General to answer Mr. A.'s interrogatories. On May 12, 2006, Judge Marlowe denied a request from Mr. A. and the Attorney General to extend discovery deadlines and other proceeding in this matter. On June 6, 2006, Mr. A. filed a motion for interlocutory review of these two rulings.

Before considering the merits of Mr. A.'s arguments, the Commission must first consider whether interlocutory review is appropriate. The Commission notes that interlocutory review of an ALJ's preliminary procedural decisions can disrupt the adjudicatory process, diminish the ALJ's ability to manage hearings, and delay resolution of claims. Consequently, the Commission will engage in interlocutory review only if the advantages from deciding the issues presented will outweigh "the interruption of the hearing process and the other costs of piecemeal review."¹ Interlocutory motions for review are appropriate only in unusual cases.

In this case, Judge Marlowe has made no determination on the merits of Mr. A.'s complaint. In fact, the time allowed for discovery has not yet expired and an evidentiary hearing must still be held. As the adjudication process continues, it is possible that the "errors" Mr. A. alleges will be corrected or rendered moot. But if either Mr. A. or the Attorney General are dissatisfied after Judge Marlowe has made her final decision, either party can then exercise its right to further review by the Commission or Appeals Board. Under these circumstances, the Commission finds no advantage to be gained from interlocutory review of the judges' initial procedural decisions.

ORDER

The Commission dismisses Mr. A.'s interlocutory motion for review and remands this matter to Judge Marlowe for further proceedings necessary to adjudicate Mr. A.'s complaint of employment discrimination. It is so ordered.

Dated this 29th day of June, 2006.

¹ Charles H. Koch, Jr., Administrative Law and Practice (1985), §6.75

R. Lee Ellertson
Utah Labor Commissioner